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UBER TECHNOLOGIES, INC.
13 and OTTOMOTTO LLC

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 WAYMO LLC,
18 Plaintiff,
19 v.
20 UBER TECHNOLOGIES, INC.,
21 OTTOMOTTO LLC; OTTO TRUCKING LLC,
22 Defendants.

Case No. 3:17-cv-00939-WHA

**DECLARATION OF MAXWELL V.
PRITT IN SUPPORT OF
DEFENDANTS UBER
TECHNOLOGIES, INC.'S AND
OTTOMOTTO, LLC'S MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS**

Judge: Hon. Jacqueline Scott Corley
Trial Date: October 10, 2017

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26 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**
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1 I, Maxwell Pritt, declare as follows:

2 1. I am counsel at the law firm of Boies Schiller Flexner LLP, representing
3 Defendants Uber Technologies Inc. and OttoMotto LLC (collectively, “Uber”) in this matter. I
4 am a member in good standing of the Bar of the State of California. I make this declaration in
5 support of Uber’s Motion to Compel. I make this declaration based on matters within my own
6 personal knowledge and if called as a witness, I could and would competently testify to the
7 matters set forth herein.

8 2. On July 3, 2017, Uber and Waymo exchanged lists of the search terms and
9 custodians that each party had developed independently and applied to identify documents and
10 communications that were potentially responsive to each other’s document requests as of that
11 time.

12 3. On July 6, 2017, at 1:17 a.m., I emailed the Special Master and Waymo’s counsel,
13 among others, raising “some initial concerns and deficiencies” in the search terms and custodians
14 that Waymo had applied to identify documents responsive to Uber’s first and second sets of
15 document requests. Since that time, Waymo’s counsel and I, along with other Uber counsel, have
16 corresponded extensively about the search terms and custodians the parties’ exchanges on July 3,
17 and engaged in negotiations over additional proposed searches and custodians. The parties also
18 met and conferred by phone numerous times with the Special Master about these issues. Uber
19 and Waymo reached agreement on “technical” searches, date ranges, and custodians that each
20 party proposed the other run (one minor issue remains outstanding regarding one of Waymo’s
21 proposed technical searches, but it is not the subject of this motion), and the parties reached
22 agreement on the “business” searches, date ranges, and custodians that Waymo proposed Uber
23 run. Although the parties reached agreement on several “business” searches, date ranges, and
24 custodians Uber proposed, the parties have been unable to reach agreement on two searches set
25 forth below, which were designed to locate responsive documents for several of Uber’s document
26 requests.

27 4. Uber issued several requests in RFP sets one and two relating to Uber’s business
28 and activities, including RFPs 21 (“All documents supporting Waymo’s contention that Uber is

1 using any Alleged Waymo Trade Secret, including documents sufficient to show Waymo's first
 2 notice of any alleged use"), 83 ("All documents relating to Waymo's view of or reaction to the
 3 formation of Ottomotto, including but not limited to John Krafcik's August 2016
 4 communication(s) with Uber"); 96 ("All documents relating to Waymo's discussion of Uber or its
 5 business"), 97 ("All documents relating to Waymo's analysis of Uber's ride-sharing business");
 6 134 ("All documents relating to the resignation of David Drummond from Uber's Board of
 7 Directors").

8 5. In response to these requests, Waymo's original search for emails relating to Uber
 9 was limited to two search strings: (1) [REDACTED] and
 10 (2) [REDACTED]. The first search was run only against only four
 11 current Waymo employees ([REDACTED]). The
 12 second search was run against only seven custodians ([REDACTED]
 13 [REDACTED]). For these custodians, emails
 14 discussing [REDACTED] that did not also hit on "[REDACTED]" or "[REDACTED]" within one or two sentences
 15 were not searched or reviewed. Waymo did not explain the basis for its restrictive search terms,
 16 the reason why the terms were applied inconsistently depending on the custodian, or why Waymo
 17 only chose to apply its search terms on such a limited number of custodians. Uber objected to
 18 these overly restrictive and inconsistently applied search terms multiple times over the past few
 19 weeks.

20 6. Uber proposed that Waymo search for [REDACTED]
 21 across 33 proposed custodians from 2013 to the present—nearly all of whom are deponents.
 22 Waymo claimed that Uber's proposed search hit on too many documents, and the terms [REDACTED]"
 23 and "[REDACTED]" were overbroad because the former "would hit on emails in which the sender said
 24 he/she was [REDACTED]—having nothing to do with the issues in the case," and the latter
 25 "could hit on emails discussing [REDACTED] other than [REDACTED]" (7/14 Waymo Ltr.) As a
 26 compromise, Uber proposed limiting the search to eleven current and former Waymo and
 27 Google/Alphabet executives and officers: [REDACTED]
 28 [REDACTED]

1 [REDACTED] (collectively, “senior business custodians”). (7/20 Uber Ltr.) Waymo
 2 responded that Uber’s proposed limitation still resulted in too many documents and reiterated that
 3 the terms [REDACTED]” and “[REDACTED]” were overbroad for the reasons above. (7/25 Waymo Ltr.) I
 4 agreed that Waymo could exclude unique terms like [REDACTED]
 5 [REDACTED] and ultimately offered to replace “[REDACTED]” with just
 6 “[REDACTED]” and “[REDACTED]” to address Waymo’s concern about the term “[REDACTED]” I also stated that Uber
 7 was fine with Waymo excluding other “[REDACTED]” but needed Waymo to identify the other
 8 [REDACTED] and I explained that the reason searching for [REDACTED] within the 11 senior business
 9 custodians’ emails was important was because these custodians, including [REDACTED], referred to
 10 [REDACTED] in documents as [REDACTED] without his last name. Waymo replied with an enlarged
 11 hit count, saying that the proposed “term hits on over [REDACTED] documents including families”—not
 12 [REDACTED] as it previously identified—[REDACTED] (including attachments) of which hit on the “[REDACTED]”
 13 and [REDACTED] (including attachments) that hit on the term “[REDACTED].” Waymo provided the following
 14 breakdown of the hits counts for each of the 11 senior business custodians: [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED] Waymo proposed that Uber drop the
 18 term “[REDACTED]” and “[REDACTED]” in exchange for Waymo running Uber’s other two proposed terms,
 19 “[REDACTED]” and “[REDACTED],” which Waymo said “hit on [REDACTED] documents and [REDACTED] documents,
 20 respectively.” I proposed limiting the date range to 2014 to the day before Waymo filed its
 21 complaint and again offered to exclude any unique terms that Waymo identified as resulting in
 22 unresponsive emails and to exclude other “[REDACTED]” that Waymo identified. Waymo never
 23 identified any other “[REDACTED]” and replied that using terms “[REDACTED]” and “[REDACTED]” (instead of
 24 “[REDACTED]” and excluding “[REDACTED]”) and limiting the search to “1/1/14-present” (despite
 25 my proposal to end the search when the complaint was filed) “still hits on over [REDACTED]
 26 documents.” Waymo refused to run “this overbroad search,” but offered no explanation how it
 27 was overbroad except to say, “Not every document that says [REDACTED] is relevant—even if Mr. [REDACTED]
 28 references [REDACTED].” I suggested that we might be willing to limit “[REDACTED]” and “[REDACTED]” to just emails

1 sent by the senior business custodians as long as Waymo agreed to run the other terms without
 2 limitation, but Waymo refused, proposing instead to limit all of the terms to emails sent by the
 3 custodians.

4 7. Uber has issued several requests seeking documents and communications relating
 5 to the Project Chauffeur Bonus Program: Request Nos. 69 (“Documents sufficient to show any
 6 bonus program for Waymo LLC or Project Chauffeur employees, including but not limited to
 7 specific bonuses paid out over time and to whom; related policies; practices and/or procedures;
 8 the determination, calculation, changes to, and timing of any valuations; and inquiries from
 9 participants of the plan.”), 163 (“All Documents and Communications relating to any anticipated
 10 or actual payments owed or made to Anthony Levandowski under the Project Chauffer bonus
 11 program, including but not limited to all Documents and Communications relating to the timing
 12 and amount of those payments”), 165 (“All documents and communications related to
 13 compensation, bonuses, or equity for current or former Waymo employees working on
 14 autonomous vehicles or technology, including, but not limited to, all documents and
 15 communications concerning Waymo’s delay or withholding of payment , the financial impact of
 16 such payment on Waymo, and statements made by Waymo executives and officers regarding
 17 such compensation, bonus, and/or equity programs (e.g., the Project Chauffeur bonus program”),
 18 177 (“Documents regarding Google’s internal communications on what the valuation should be
 19 for Project Chauffeur, for each occasion that Google has valued Project Chauffeur for the purpose
 20 of paying bonuses”), 178 (“Documents showing the amounts of each of the bonuses paid to the
 21 Project Founders of Project Chauffeur, or other Participants in the Project Chauffeur Bonus
 22 Program, and the dates those bonuses were paid”), and 183 (“All Documents and
 23 Communications relating to Anthony Levandowski’s participation in the Project Chauffeur bonus
 24 program”).

25 8. Waymo’s original search for bonus-related emails was limited to six current
 26 employees and five former employees, and Waymo applied only the search: [REDACTED]
 27 [REDACTED]. These search parameters
 28 did not encompass the timing, calculation, value or negotiations relating to the Project Chauffeur

1 Bonus Program. Moreover, Waymo only searched for the word “[REDACTED]” in connection with
 2 Google drive files (e.g. non-email sources) belonging to *former* Google employees. Uber noted
 3 that Waymo’s search was overly restrictive and was not consistently applied across custodians.

4 9. Uber proposed that Waymo run the following search across custodians: [REDACTED]
 5 [REDACTED]
 6 [REDACTED]. Waymo claimed
 7 that Uber’s proposed search hit on too many documents because it was not tied to a particular
 8 employee, and proposed that “AND should be replaced with a proximity limiter.” To address
 9 Waymo’s concerns, Uber proposed splitting the search into two and applying a proximity limiter
 10 to the second: first, [REDACTED]

11 [REDACTED] and second, [REDACTED]
 12 [REDACTED]

13 [REDACTED] Waymo responded that the first search hit on over [REDACTED] unique documents, while the
 14 second just hit “on over [REDACTED] unique documents,” and said that the “term ‘[REDACTED]’ appears to
 15 be bringing in non-responsive documents, specifically bug reports that track [REDACTED]
 16 [REDACTED]” and the “word [REDACTED]” is being used not just to refer to [REDACTED] but to many
 17 other code related concepts and is bringing in large amounts of irrelevant bug reports and change
 18 logs.” So Uber proposed limiting both searches by using a “w/10” proximity limiter, and
 19 agreeing to exclude “[REDACTED]” (which Waymo also claimed
 20 resulted in unresponsive documents), “[REDACTED],” and unique terms associated with bug
 21 reports and change logs (but not “[REDACTED]” by itself since emails discussing value and valuation are
 22 highly relevant to the Project Chauffeur bonus program and to Waymo’s damages allegations).
 23 Waymo said these changes reduced the hit count for the first search to [REDACTED] and [REDACTED] for the
 24 second, but both of these numbers were not de-duped across custodians, across the other searches
 25 Waymo agreed to run, or against the documents Waymo has already reviewed or produced.
 26 Regardless, Uber again offered to limit these searches by excluding any unique terms associated
 27 with [REDACTED] that Waymo identified (it didn’t), agreeing to change the date range from 4/1/2007
 28 to present, to 1/1/2011 to the date before the lawsuit was filed, and agreeing to limit both searches

1 to the 11 senior business custodians (replacing [REDACTED] with Google's [REDACTED]
2 [REDACTED] plus four others ([REDACTED]), rather
3 than all 33 Waymo custodians. Waymo rejected that proposal as well, claiming there were still
4 too many hits.

5 10. I confirmed with Waymo's counsel on meet-and-confer calls with the Special
6 Master on August 3, 2017, that the hit counts Waymo provided for the searches at issue in this
7 motion were not de-duplicated across custodians, other searches, or documents Waymo already
8 produced.

9 11. Uber is in the process of reviewing over 170,000 documents plus full families,
10 after de-duplication, with a search term hit for responsiveness based on the search terms that Uber
11 exchanged with Waymo and the additional terms and custodians proposed by Waymo. These
12 documents do not include the many thousands of documents Uber reviewed to respond to the
13 discovery Waymo served in the preliminary injunction and expedited discovery phases of this
14 case.

15 12. Attached as **Exhibit 1** is a true and correct copy of excerpts of Waymo's
16 Responses and Objections to Uber's First through Fifth Sets of Requests for Production of
17 Documents.

18 13. Attached as **Exhibit 2** is a true and correct copy of Uber's Sixth Set of Requests
19 for Production.

20 14. Attached as **Exhibit 3** is a true and correct copy of a December 6, 2010 email from
21 Larry Page to David Lawee produced by Waymo, bearing the bates number WAYMO-UBER-
22 00026138-26140.

23 15. Attached as **Exhibit 4** is a true and correct copy of a March 18, 2011 email from
24 Sebastian Thrun to Dirk Haehnel produced by Waymo, bearing bates number WAYMO-UBER-
25 0008935-8939.

26 16. Attached as **Exhibit 5** is a true and correct copy of a September 2, 2015 email
27 from Chris Urmson to Ian Smith, produced by Waymo, bearing bates number WAYMO-UBER-
28 00019667-19668.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 3rd day of August, 2017, in Oakland, California.

Maxwell V. Pritt

I, Karen L. Dunn, am the ECF User whose ID and password are being used to file this document. In compliance with General Order 45, X.B., I hereby attest that Maxwell V. Pritt has concurred in this filing.

Karen L. Dunn